

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**JOINTLY PROPOSED AGENDA
FOR THE MARCH 13, 2014 STATUS CONFERENCE**

The Plaintiffs' Steering Committee, Ameridose LLC, New England Compounding Pharmacy, Inc. (through both the Trustee and counsel), and Official Committee of Unsecured Creditors (through counsel) jointly propose the following agenda for the March 13, 2014 status conference:¹

A. Report to the Court regarding status of various issues.

1. Introduction of the parties
2. Overview of the case and outstanding issues (*Thomas Sobol and Kristen Johnson for the PSC*)
3. Status of discovery (*Thomas Sobol and Gerard Stranch for PSC*)
 - a. PSC's Motion to Partially Lift Discovery and various oppositions (see below)
 - b. PSC motion to expedite discovery (see below)
4. Status of litigation track (*Mark Chalos and Gerard Stranch for PSC*)
 - a. PSC's Trial Plan as to St. Thomas and oppositions (see below)
5. Status of Motion to Dismiss briefing (*Mark Chalos and Gerard Stranch for PSC*)
 - a. St. Thomas schedule
 - b. Premier schedule
6. Status of Summary Judgment briefing (*Mark Chalos and Gerard Stranch for PSC*)
 - a. St. Thomas's motions for summary judgment
 - b. Plaintiffs' 56(d) motion

¹ All defendants whose counsel have filed notices of appearance in the MDL were provided an opportunity to comment on the proposed agenda.

7. Status of bankruptcy proceedings (*Michael Gottfried for Trustee*)
8. Status of proposed settlement in principle with NECC principles, related entities, and insurers (*Michael Gottfried for Trustee, Mike Coren for OCC, Anne Andrews for OCC, Thomas Sobol for PSC*)
9. Status of mediation efforts [Mediation Order, Dkt. No. 394] (*Michael Gottfried for Trustee, Mike Coren for OCC, Anne Andrews for OCC, Kristen Johnson for PSC*)
10. Status of appeals (*Michael Gottfried for Trustee*)
11. Status of insurance declaratory actions pending in front of Judge Saylor: (*Rick Ellis for PSC*)
 - a. *Ironshore Specialty Ins. Co. v. Ameridose et al.*, 1:13-cv-13000-FDS (D. Mass.)
 - b. *Certain Underwriters at Lloyd's, London v. Ameridose et al.*, 1:13-cv-12609-FDS (D. Mass.)
 - c. *Landmark Am. Ins. Co. v. ARL Bio Pharma, Inc.*, CJ-2013-3193 (Okla. Dist. Ct.)

B. Fully briefed motions that are ripe for oral argument.

1. PSC's Motion to Partially Lift Discovery Stay against Affiliated Defendants [Dkt. 534] (*Thomas Sobol for PSC*)
 - a. Chapter 11 Trustee's Response [Dkt. 758] (*Michael Gottfried for Trustee*)
 - b. Affiliated Defendants' Opposition [Dkt. 757] (*Mathew Moriarty for Ameridose, Jashua Klarfeld for GDC*)
 - c. Official Committee of Unsecured Creditor's Responses [Dkt. 762] (*Mike Coren for OCC*)
2. PSC's Motion to Shorten the Time for Certain Defendants to Respond to Discovery [Dkt. 975]
 - a. Response by Tennessee Defendants to PSC's Motion to Shorten the Time to Respond to Discovery (to be filed March 11, 2014)
3. PSC's Motion for Entry of CMO Establishing Assessment Procedures to Fund Common Benefit Account [Dkt. 790] (*Thomas Sobol for PSC*)
 - a. Response filed by Certain Members of the Official Committee of Unsecured Creditors [Dkt. 830] (*Anne Andrews for certain members of the OCC*)
 - b. Limited Objections filed by the Official Committee of Unsecured Creditors [Dkt. 833] (*Mike Coren for OCC*),

- c. Limited Objections filed by Chapter 11 Trustee of NECP, Inc. [Dkt. 834]
(*Michael Gottfried for Trustee*)
 - d. Opposition filed by Plaintiffs Dale and Allison Devilli [Dkt. 836]
 - e. Response of Interested Plaintiffs' Counsel [Dkt. 839]
 - f. Sur-reply filed by Official Committee of Unsecured Creditors and Chapter 11 Trustee of NECP, Inc. [Dkt. 914]
 - g. Sur-reply filed by Certain Members of the Official Committee of Unsecured Creditors [Dkt. 915]
4. Motion for Entry of Bellwether Trial and Pre-Trial Scheduling Order (St. Thomas Trial Plan) filed by PSC [Dkt. 837, 838] (*Mark Chalos for PSC*)
- a. Response by the Tennessee Defendants [Dkt. 858]
 - b. Response by St. Thomas Defendants [Dkt. 964]
 - c. Response by UniFirst [Dkt. 965]
 - d. PSC Reply [Dkt. 987] (Motion for Leave to File Reply pending)
5. Trustee's Renewed and Supplemental Motion to Transfer [Dkt. 732] (*Michael Gottfried for Trustee*)
- a. Creditor's Committee Response [Dkt. 743] (*Mike Coren for OCC*)
 - b. Roanoke Gentry Locke Plaintiffs' Renewed Motion for Mandatory or Permissive Abstention [Dkt. 763] (*Scott Sexton for Gentry Locke*)
 - c. Opposition filed by Sandra F. Artis, *et. al.* [Dkt 764]
 - d. Opposition filed by Chance Baker, *et. al.* [Dkt 766] (*Lauren Ellerman for Mr. Baker et. al.*)
 - e. Corrected Response filed by Plaintiffs' Lead Counsel [Dkt. 799] (*Thomas Sobol for PSC*)
 - f. Opposition filed by Roanoke Area LichtensteinFishwick Intervenors [Dkt. 792]
 - g. Trustee and Official Committee of Unsecured Creditors Omnibus Reply on Renewed Transfer and Opposition to Roanoke Gentry Locke Mandatory or Permissive Abstention [Dkt. 818]
 - h. Memorandum in Support filed by Insight Health Corp. [Dkt 820]
 - i. Roanoke Gentry Locke Reply to Trustee and Official Committee of Unsecured Creditors Omnibus Reply [Dkt. 844]
 - j. Opposition filed by Image Guided Pain Management, P.C. [Dkt. 846]

C. Briefing in progress.

1. UniFirst Response to Issues Raised in the Master Complaint (due April 1, 2014) [Dkt. 874]
2. Master Complaint against Affiliated Defendants and responsive pleadings
 - a. March 31, 2014, deadline to file Master Complaint against Affiliated Defendants [Dkt. 881(5)]
3. Dispositive Motions:
 - a. Motion for Summary Judgment by the Tennessee Defendants [Dkt. 774, 775, 776, 777, 778]
 - i. PSC Rule 56 (d) Response to Tennessee Defendants' Motion for Summary Judgment [Dkt. 948]
 - ii. Response to PSC Rule 56(d) motion by Tennessee Defendants (due March 14, 2004) [Dkt. 963]
 - b. Motion to Dismiss for Failure to State a Claim (global claims) filed by Premier Orthopedic and Sports Medicine Associates of Southern New Jersey, LLC, *et. al.* [Dkt. 831]
 - i. PSC Response [Dkt 980]
 - ii. Premier Reply (due March 21, 2014)
 - c. Opposition to following motions due March 28, 2014 [Dkt. 845]
 - i. Motion to Dismiss by the Tennessee Defendants (failure to comply with Tenn. Code. Ann. 29-26-121 [Dkt. 770, 898, 899, 924, 925]
 - ii. Motion to Dismiss by the Tennessee Defendants (global claims) [Dkt. 771, 772]
 - iii. Motion to Dismiss for Failure to State a Claim filed by Ascension Health *et al.* [Dkt. 779, 780]

D. Matters referred to Judge Boal.

1. Report on compliance with J. Boal's Orders on the following motions:
 - a. Travelers Motion to Quash [Dkt. 633, 730, 785, J. Boal Order at 890]
 - b. Liberty Industry's Motion to Quash [Dkt. 793, 794, 801, J. Boal Order at 890]

2. PSC's Motion(s) to Compel and for Civil Contempt as to Baltimore Pain Management Center [Dkt. 786, 787]
 - a. Opposition to Motion to Compel by Baltimore Pain Management Center [Dkt. No. 842].
 - b. PSC Reply to Opposition by Baltimore Pain Management Center [Dkt. 849]
3. Entry of Deposition and ESI Protocols [Dkt. 876, 930, 981, 983]

E. Case management issues.

1. Schedule for future status conferences

Dated: March 10, 2014

Respectfully submitted,

Matthew P. Moriarty
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113
(216) 592-5000
mmoriarty@tuckerellis.com

Ameridose's Liaison Counsel

Paul D. Moore
DUANE MORRIS LLP
100 High Street, Suite 2400
Boston, MA 02110-1724
(857) 488-4230
pdmoores@duanemorris.com

*Chapter 11 Trustee for the Estate of New
England Compounding Pharmacy, Inc.*

William R. Baldiga
Rebecca L. Fordon
BROWN RUDNICK LLP
One Financial Center
Boston, Massachusetts 02111
(617) 856-8200
wbaldiga@brownrudnick.com
rfordon@brownrudnick.com

David J. Molton
BROWN RUDNICK LLP
Seven Times Square
New York, New York 10036
(212) 209-4800
dmolton@brownrudnick.com

*Counsel for the Official Committee of
Unsecured Creditors*

/s/ **Kristen Johnson Parker**

Thomas M. Sobol, BBO # 471770
Kristen Johnson Parker, BBO# 667261
HAGENS BERMAN SOBOL SHAPIRO LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
(617) 482-3700
tom@hbsslaw.com
kristenjp@hbsslaw.com

Plaintiffs' Lead Counsel

Frederick H. Fern
HARRIS BEACH PLLC
100 Wall Street
New York, NY 10005
(212) 687-0100
hbnecc@harrisbeach.com

NECC's Liaison Counsel

CERTIFICATE OF SERVICE

I, Kristen Johnson Parker, hereby certify that I caused a copy of the above Corrected Jointly Proposed Agenda for the March 13, 2014 Status Conference to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: March 10, 2014

/s/ Kristen Johnson Parker
Kristen Johnson Parker, BBO # 667261